

**UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
CLEVELAND DIVISION**

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In Re:

**JOHN MADZELONKA**

**Case No. 14-16360**

**Chapter 7**

Debtor

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**JUDGE PRICE SMITH**

**MOTION TO AVOID JUDICIAL LIEN OF CAPITAL ONE BANK (USA) NA**

**NOW COMES** the Debtor above-named, through counsel, who respectfully moves this Court as follows:

1. This matter is a core proceeding pursuant to 28 U.S.C. §157, and that the Court has jurisdiction pursuant to 28 U.S.C. § 151, 157 and 1334.
2. The Debtor fileS this motion to avoid a judicial lien pursuant to 11 U.S.C. §522(f)(1)(A) and RC 2329.66(A)(1).
3. The Debtor filed this case on October 6, 2014.
4. The Debtor is now, and has been at all times since this case was filed, the owner of real property (hereinafter "said property") now or formerly known as 27052 Valeside Lane, Olmsted Township, OH 44050, located in the County of Cuyahoga, as more specifically described as File Number 200901160436 as recorded on 01/16/2009 in the County Recorder for Cuyahoga County, Ohio.
5. As of the date this case was filed, the fair market value of said property was \$183,305 based upon comparable sales as reflected on zillow.com.
6. As of the date this case was filed, said property was the residence of Debtor, and the Debtor claimed and were entitled to claim an exemption in said property pursuant to RC 2329.66(A)(1) of not more than \$132,900.
7. That no objection has been filed regarding the exemptions claimed by the Debtors.
8. That Capital One Bank (USA) NA was listed as a creditor in the schedules filed in this case.
9. That said creditor holds a judicial lien, which was recorded, in Cuyahoga County, OH case

number JL-14-679219 in the principal sum of \$8,075.30 plus interest from the date of judgment on the principal balance at the rate of 3.00% per annum and costs.

10. That said judicial lien constitutes a lien upon said residential property.
11. Upon information and belief, as of the date this case was filed, the only other liens against the property recorded in Cuyahoga County were the following:

| Name of Creditor Holding Lien    | Type of Lien                          | Payoff<br>Amount of Lien    |
|----------------------------------|---------------------------------------|-----------------------------|
| Talmer Bank and Trust<br>US Bank | Mortgage Deed<br>Second Mortgage Deed | \$126,490.63<br>\$24,650.00 |
| Total of Other Liens:            |                                       | \$151,140.00                |

12. That since the sum of the amount of the said judicial lien held by Capital One Bank (USA) NA and the total amount of all other said liens on the said real property do not exceed the value of the property and the amount of the exemption that the Debtor was entitled to claim on the property, pursuant to U.S.C. § 522(f)(2)(A), the judicial lien impairs the homestead exemption under RC 2329.66(A)(1) is avoidable to the full extent of the judicial lien.

**WHEREFORE**, the Debtors pray that the Court enter an Order as follows:

1. Avoiding the judicial lien held by Capital One Bank (USA) NA to the full extent of said judicial lien, as against debtor's residential property; and
2. Granting such other and further relief as to the Court may seem just and proper.

Dated: January 2, 2015

**BALENA LAW FIRM, LLC**

s/ William Balena

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William J. Balena, Member 0019641  
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Debtors

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**CERTIFICATE OF SERVICE**

I, WILLIAM BALENA, certify under penalty of perjury that I am, and at all times hereinafter mentioned was more than eighteen (18) years of age and that on January 2, 2015, I served copies of the foregoing **MOTION TO AVOID JUDICIAL LIEN** by **regular mail or by ECF**, upon the following parties:

Richard D. Fairbank  
President and CEO  
Capital One Bank (USA) NA  
15000 Capital One Drive  
Richmond, VA 23238

Jackson T. Moyer  
Attorney for Capital One Bank (USA) NA  
471 East Broad Street  
12<sup>th</sup> Floor  
Columbus, OH 44113

John Madzelonka  
27052 Valeside Lane  
Olmsted Township, OH 43215

Waldemar Wojcik, Chapter 7 Trustee (Via ECF at [wwojcik@wojciklpa.com](mailto:wwojcik@wojciklpa.com))

**BALENA LAW FIRM, LLC**

s/ William J. Balena

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William J. Balena, Member 0019641  
Attorney for Debtors